STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 21, 2010
V	No. 295432 Wayne Circuit Court
TANISHA A. HOLLIS, Defendant-Appellant.	LC No. 09-014229-FC

Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals as of right her bench trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court sentenced defendant as a second habitual offender to seven to 15 years in prison. Because sufficient evidence supported defendant's conviction, defendant was not denied the effective assistance of counsel at trial, and defendant's sentence was not invalid, we affirm.

Defendant and the victim, Milton Robinson, have five children in common. All five children lived with him and his wife of three years, Tanisha Sharon Jalise Robinson (Jalise Robinson) at their home in Taylor. Robinson testified that during the early morning hours of April 18, 2009, his thirteen-year-old son called him and asked him to meet him at defendant's house in Detroit to give him a ride home. Robinson stated that he was drunk so defendant's brother or cousin dropped him off at defendant's residence. When Robinson went inside defendant was there but their thirteen-year-old son was not. Robinson testified that the next thing he remembers was waking up the following morning at defendant's residence. He stated that he wanted to leave so he kicked the door open because it was locked and he did not have a key. Robinson testified that as he began walking away from defendant's residence, defendant ran after him yelling that he was going to have to pay for her door. Robinson stated that he kept walking and said he would not pay for the door but defendant continued running after him yelling loudly. When he was about three blocks away from defendant's house, Robinson stated that he put down the bottle of beer he had with him and turned around to face defendant who was still running after him yelling about her door. As he turned around he saw defendant take a seven or eight inch knife out of her pants and swing it at him once which resulted in a stab wound to Robinson's chest. Robinson stated that his body began to shut down and he lay down on the ground. At this point he heard defendant say, "I finally got that bitch," and then, "you

finna [sic] die, bitch." Robinson testified that he woke up in the hospital three months later after having surgery on his heart and lungs.

Robinson further testified that he and defendant had a tumultuous relationship over many years involving arguments and reciprocal domestic violence and assaultive behavior. Robinson stated that unbeknownst to his wife, he and defendant had a sexual relationship through March 2009. Robinson testified that about a month before the stabbing at issue in this case, defendant had stabbed him in his lower back. Robinson stated that he did not make a police report because of the sexual relationship with defendant and he did not want anyone to know where he was or that he had been with defendant. Robinson told his wife, Jalise Robinson, that he was attacked by someone at the gas station while he was pumping gas and did not know who did it.

Jalise Robinson stated that she had dropped defendant off at his grandmother's house at approximately 4:00 pm the day before the stabbing. Jalise Robinson testified that she was surprised to hear defendant's voice on the phone at approximately 8:30 am on April 18, 2009 because she had a new unlisted phone number. Jalise Robinson stated that she answered the phone even though it had a foreign number on the caller ID because she was expecting to hear from defendant so she could pick him up from his grandmother's house. Jalise Robinson stated that defendant said the following to her on the phone: "You need to come get your husband. . . . [H]e came over to my house acting belligerent, telling me who I can have in my house, I'm tired of the n-----. I'm sick, y'all. Y'all think y'all slick. . . . I just stalled the n----- a month ago. Shit, I just had to stab him today." Jalise Robinson called the hospital and determined that her husband was in critical but stable condition at St. John Hospital. Jalise Robinson testified that she told police about the phone call she received from defendant. According to Jalise Robinson, Robinson was discharged from the hospital on July 2, 2009.

Alicia Hamilton, who does not know defendant or Robinson, lives near the corner of Hoover and Seven Mile and heard arguing on the morning of the incident. She looked outside and saw defendant and Robinson arguing in the middle of the street and continued to watch the argument unfold for about ten minutes. Hamilton stated that defendant followed Robinson telling him that he was going to fix the door he broke and Robinson kept saying "get away from me" and continued to walk away from defendant. Hamilton said defendant then had a knife in her right hand and pointed at Robinson who was about four feet away from defendant. Robinson then picked up a bottle and told defendant that if she came any closer he was going to throw the bottle at defendant. Defendant then ran toward Robinson, pulled her arm back with the knife in her right hand, and then swung the knife at Robinson. Robinson then let the bottle go and clutched his chest. Hamilton stated that Robinson attempted to walk very slowly toward a gas station and defendant walked away. As defendant walked away, Hamilton heard defendant saying that she hated Robinson and that he was still going to fix her door.

Defendant testified on her own behalf at trial. Defendant stated that she and Robinson had planned for him to come to her house on the evening of April 17, 2010 and that her cousin dropped Robinson off at her house. Defendant testified that Robinson was intoxicated when he arrived at her house, brought three 40 ounce bottles of beer with him, and spent the night at her house. She also stated that the following morning an argument ensued when Robinson, who was still drunk, asked her to make him sausages. Defendant stated that she was on the phone with a friend and washing dishes in the kitchen. According to defendant, Robinson got very angry, took

her phone, and "launched" it at the wall. Defendant testified that as she was trying to put her phone back together Robinson began choking her over the counter. Defendant stated that she was gasping for air and trying to fight Robinson off when she grabbed a "little steak knife" out of the dish rack on the counter and reached upward trying to get Robinson off of her when she stabbed him because she was afraid for her life. She testified that she did know she had stabbed Robinson but had no idea how badly he was hurt. She testified that after the physical altercation Robinson took his coat, kicked the door down, and left. Defendant stated that she followed him with the knife still in her hand yelling at him that he was going to fix her door. Defendant testified that she called Janise Robinson to tell her about the relationship she had with defendant and also to tell her to come pick him up.

Defendant was convicted, after a bench trial, of assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant now appeals as of right.

Defendant first argues that there was insufficient evidence to support her conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. We review sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In doing so, this Court must review "the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences arising from that evidence may be satisfactory proof of the elements of a crime. *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

"The elements of assault with intent to do great bodily harm less than murder are: '(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.'" *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005), quoting *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). MCL 750.84. The second element requires proof of specific intent, as opposed to general intent. *Parcha*, 227 Mich at 239; *Brown*, 267 Mich at 147. "[T]he distinction between specific intent and general intent crimes is that the former involve a particular criminal intent beyond the act done, while the latter involve merely the intent to do the physical act." *People v Beaudin*, 417 Mich 570, 573-574; 339 NW2d 461 (1983) (citation omitted). "This Court has defined the intent to do great bodily harm as 'an intent to do serious injury of an aggravated nature.'" *Brown*, 267 Mich App at 147, citing *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). "An intent to harm the victim can be inferred from defendant's conduct." *Parcha*, 227 Mich App at 239.

The facts indicate that defendant chased Robinson down the street yelling at him for nearly three blocks with a knife in her possession. All the while, Robinson repeatedly told defendant to get away from him. When Robinson stopped walking and turned around, defendant pulled out the knife and pointed it at him, threatening him. When Robinson picked up a bottle and told her not to come any closer defendant took that opportunity to lunge at Robinson with the seven or eight inch knife stabbing him in the chest. Hamilton, a disinterested eyewitness, witnessed the circumstances unfold and testified that she saw defendant run toward Robinson, pull her arm back with the knife in her right hand, and then swing the knife at Robinson, after which Robinson clutched his chest. Defendant did not attempt to get help for Robinson and

instead fled the scene after the stabbing. The stabbing caused serious and life-threatening injuries to Robinson's heart and lungs that required multiple surgeries and a hospital stay of two and a half months. There was also evidence that defendant called Robinson's wife and admitted to stabbing Robinson. Viewing this evidence in the light most favorable to the prosecution, we conclude that a reasonable trier of fact could have found beyond a reasonable doubt that defendant intended to stab the victim in the chest with a knife. Furthermore, a rational trier of fact could have also inferred that because defendant stabbed him with a knife, a potentially deadly weapon, she intended to cause serious bodily injury and harm. See, e.g., *Parcha*, 227 Mich App at 239; *People v Cunningham*, 21 Mich App 381, 383-384; 175 NW2d 781 (1970). While defendant argues that the trial court should have believed her account of the incident, that the stabbing occurred as the result of self-defense, "[t]his Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Next, defendant argues that she received ineffective assistance of counsel at trial. Defendant specifically argues that the outcome of the trial would have been different had her counsel called witnesses who could have testified that defendant turned herself in to the police, and also obtained police and medical records supporting her claim that Robinson had attacked her in the past. We review defendant's unpreserved ineffective assistance of counsel claim for plain error affecting her substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Because defendant did not raise her ineffective assistance of counsel claim in the trial court, our review of that claim is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). "Effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise." *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability that the result of the proceeding would have been different but for counsel's error. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

"Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). The failure to call witnesses constitutes ineffective assistance only if it deprives defendant of a substantial defense. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). "A defense is substantial if it might have made a difference in the outcome of the trial." *People v Hyland*, 212 Mich App 701, 710-711; 538 NW2d 465 (1995), vac'd in part on other grds, 453 Mich 902 (1996).

Defendant's first allegation of ineffective assistance of counsel is based on her claim that had her counsel called witnesses who could have testified that defendant turned herself in to police rather than being apprehended by the fugitive apprehension team, the outcome of her trial would have been different. At trial, defendant specifically testified that she turned herself in to police on May 1, 2009. Thereafter, the prosecutor provided a rebuttal witness, Kimberly Gaddies, a Detroit police officer, who testified that defendant did not turn herself in but was eventually arrested by the fugitive apprehension team. On cross-examination of Gaddies, defense counsel further questioned Gaddies about the specifics regarding defendant's arrest.

Defense counsel asked several questions of Gaddies raising the inference that defendant actually turned herself in to the fugitive apprehension team in a vacant lot. When the witness got frustrated with the line of questioning, she stated, "Are we going to argue?" At which point, the trial court stated, referring to the line of questioning about whether defendant turned herself in or whether she was in fact apprehended, "[i]t's not even necessary, not even relevant." Apparently, taking a cue from the trial court, defense counsel ceased questioning Gaddies. The record is clear that the trial court was aware of the apprehension issue and found it irrelevant. This was so despite defense counsel's repeated efforts to place significance on defendant's assertion that she turned herself in to police. Again, the failure to call witnesses constitutes ineffective assistance only if it deprives defendant of a substantial defense. *Dixon*, 263 Mich App at 398. On this record, defendant has not established ineffective of counsel with regard to this allegation when the trial court in a bench trial found the line of questioning irrelevant and further witnesses would not have provided defendant a substantial defense.

Defendant's second assertion of ineffective assistance of counsel is based on her claim that had her counsel obtained police and medical records supporting allegations that Robinson had attacked her in the past, the outcome of her trial would have been different. This claim is likewise without merit. Defendant herself testified to two previous occasions where she alleges Robinson assaulted her including beating her and "busting" her head in four places. Defendant alleged that on those occasions Robinson was drunk. She also testified that Robinson was arrested for domestic violence when he injured her head. Defendant also testified that Robinson had a reputation for being violent. She also admitted that she similarly had a reputation for being violent. Robinson also testified that the two would fight mostly when he was drunk and that he had hit defendant in the past and caused her to have a black eye. On this record, it was plain to the trial court that defendant and Robinson had a turbulent and often violent relationship. The outcome of the proceedings would not be different when the claimed deficiency involves the failure to seek admission of cumulative evidence. See *People v Hill*, 257 Mich App 126, 140; 667 NW2d 78 (2003).

Defendant next argues that the trial court erred when it based her sentence on inaccurate information and also abused its discretion when it sentenced defendant "near the very top" of the sentence guidelines. We review for an abuse of discretion a trial court's imposition of a sentence. *People v Aldrich*, 246 Mich App 101, 126; 631 NW2d 67 (2001). We must affirm if the defendant's minimum sentence falls within the properly scored sentencing guidelines. *People v Powe*, 469 Mich 1032; 679 NW2d 67 (2004); MCL 769.34(10).

Here, defendant does not allege that the trial court improperly scored the guidelines. Rather, the trial court sentenced defendant to a minimum sentence of 84 months' imprisonment, which, as defendant concedes, was near the maximum allowed under the minimum guideline range of 38 to 95 months. Thus, this minimum sentence was within the guidelines range and we must affirm it. *Powe*, 469 Mich at 1032. Defendant, does, however, suggest that her sentence was based on inaccurate information and is disproportionate, given the history of domestic violence between defendant and the victim. Defendant asserts that the trial court's sentence did not reflect the particularized history between defendant and Robinson, including a continuing relationship despite Robinson's marriage, as well as the mutuality of assaultive conduct between the parties. Defendant contends that these factors weigh in her favor and thus the trial court failed to tailor the sentence to her unique circumstances. "[L]egislatively mandated sentences

are presumptively proportionate and valid." *People v DiVietri*, 206 Mich App 61, 63; 520 NW2d 643 (1994). Defendant has failed to overcome this presumption. Defendant stabbed Robinson in the chest with a seven inch knife. As a result, Robinson suffered life-threatening injuries to his heart and lungs requiring multiple surgeries, an extended stay at the hospital, rehabilitation, and lingering physical effects. Defendant did not call 911 or attempt to assist him in any way. Instead defendant fled the scene and called Robinson's wife to tell her about their affair and that she had just stabbed Robinson. Given these facts, and the fact that defendant has one prior conviction, we cannot conclude that the trial court abused its discretion; rather, the record reflects that the sentence was based on accurate information and was proportionate to the seriousness of the crime.

Defendant finally argues that her sentence is invalid under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004) because the trial court used facts "neither admitted by [defendant] during [a] plea, nor proven to a jury beyond a reasonable doubt" when it assigned defendant a sentence near the top of the guidelines range. However, our Supreme Court has determined that *Blakely*, which prohibits a sentencing court from increasing the penalty for a crime beyond its statutory maximum based on facts not found by a jury, is not applicable to Michigan's indeterminate sentencing scheme. See *People v Harper*, 479 Mich 599, 644-645; 739 NW2d 523 (2007). Thus, defendant is not entitled to relief on this basis.

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald